

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

COSTAR GROUP, INC., COSTAR REALTY
INFORMATION, INC., and LOOPNET, INC.,

Plaintiffs,

v.

XCELIGENT, INC.,

Defendant.

Case No. 4:16-cv-01288-FJG

**JOINT FACTUAL STIPULATION BY PLAINTIFFS, COSTAR GROUP, INC. AND
COSTAR REALTY INFORMATION, INC., AND DEFENDANT, XCELIGENT, INC.**

Plaintiffs, CoStar Group, Inc. (“CoStar Group”) and CoStar Realty Information, Inc. (“CoStar Realty”) (together with CoStar Group, “CoStar”¹), and Defendant, Xceligent, Inc. (“Xceligent”), through its duly appointed Chapter 7 bankruptcy trustee, Alfred T. Giuliano, submit this Joint Factual Stipulation as follows:

1. CoStar alleged in their Amended Complaint dated June 21, 2017, that Xceligent accessed CoStar’s websites millions of times without authorization in order to copy CoStar-copyrighted photographs and commercial real estate data and in doing so copied tens of thousands of photographs whose copyrights were owned by CoStar Realty (“CoStar-Copyrighted Photographs”). As set forth below, the FTC has concluded that Xceligent improperly derived 38,489 images from CoStar systems. CoStar also alleged that Xceligent used offshore agents to facilitate its unlawful scheme, including MaxVal

¹ LoopNet, Inc. was also a named plaintiff at the time the Amended Complaint was filed. Since that time, LoopNet, Inc. merged into CoStar Realty, thereby ceasing to being a separate, stand-alone entity.

Technologies Pvt. Ltd. in India (“MaxVal”) and Avion BPO Corporation in the Philippines (“Avion”). As discussed in more detail below, Xceligent’s agents have, as a result of that work for Xceligent, been indicted and/or enjoined and/or had judgment entered against them in various jurisdictions.

2. On October 23, 2017, the U.S. District Court for the Western District of Pennsylvania entered a Judgment and Permanent Injunction against MaxVal’s American affiliate, RE BackOffice, Inc. (“REBO”), on counts of contributory and vicarious copyright infringement of CoStar-Copyrighted Photographs, conspiracy with Xceligent and MaxVal to violate the Computer Fraud and Abuse Act, and conspiracy with Xceligent and MaxVal to engage in unfair competition against CoStar. The permanent injunction was supported by factual admissions by REBO, including that “with Xceligent’s knowledge and at Xceligent’s direction, the REBO/MaxVal operations team used measures to circumvent CoStar’s security measures and thereby hack into CoStar sites in order to populate the Xceligent databases with content copied from CoStar.” REBO further stipulated that Xceligent Chief Executive Officer Doug Curry acted “to directly train the operations team” that carried out the hacking and copying, and that consistent with multiple contemporaneous emails, Xceligent’s Chief Research Officer Nathan Lipowicz “was primarily responsible for the VPN solution, and directed REBO/MaxVal that it should be used by the MaxVal researchers specifically to access LoopNet, bypassing CoStar’s security measures.” *See CoStar Group, Inc., et al. v. RE BackOffice, Inc.*, No. 2:17-cv-01354-AJS.
3. On April 16, 2018, an Indian court issued a permanent injunction against MaxVal. The permanent injunction was supported by factual admissions by MaxVal, including that its

employees acted at the direction of Xceligent managers “to access and copy content from websites owned by Xceligent’s competitor CoStar” and “upload this content and these digital files into Xceligent’s databases without first determining whether this data or these digital files were protected by relevant laws.” MaxVal further admitted that it “was misled by Xceligent and its executives and managers,” including Xceligent Chief Executive Officer Doug Curry, who “personally visited Max[V]al” to supervise its work for Xceligent, and Xceligent Chief Research Officer Nathan Lipowicz, who “set up technological workarounds . . . to circumvent the access denials” and “instructed Max[V]al researchers to copy content from . . . CoStar-owned websites.” *See CoStar Group, Inc., et al. v. MaxVal Technologies Pvt. Ltd.*, Civil Suit No. 7 of 2016.

4. On October 9, 2018, an independent monitor appointed by the Federal Trade Commission (the “FTC”) issued a report to the FTC, CoStar, and Xceligent regarding the monitor’s audit of Xceligent’s systems. The report concluded that 38,489 images found in Xceligent’s systems had been “derived improperly by Xceligent from the Database of Costar.”
5. On January 17, 2019, Avion’s directors, officers, and employees were indicted by prosecutors in the Philippines for criminal violations of the Cybercrime Prevention Act of 2012. Among other things, they have been charged with “willfully, unlawfully and knowingly illegally access[ing] in whole or in part . . . CoStar databases . . . without right by circumventing CoStar’s country-blocking and abuse-monitoring softwares.” *See CoStar Group, Inc., et al. v. Von Ryan Nagasangan, et al.*, I.S. No. XVI-INV-17J-00288. In recommending criminal charges, the Philippines Department of Justice issued a Resolution observing that Avion acted in concert with Xceligent management to commit

“the classic example of a computer crime” by “accessing LoopNet in order to copy [CoStar’s] photographs before transmitting them to Xceligent” for “widespread infringement.” Avion’s directors, officers, and employees are also defendants in civil proceedings pending before the Intellectual Property Office of the Philippines Bureau of Legal Affairs arising from similar misconduct. *See CoStar Group, Inc., et al. v. Avion BPO Corporation, et al.*, IPV No. 10-2017-00001.

Dated: December 2, 2019

Respectfully submitted,

By: /s/ Nicholas J. Boyle

Robert T. Adams - MO Bar # 34612
Ann M. Songer - MO Bar # 17315
Eric M. Anielak - MO Bar # 45653
SHOOK, HARDY & BACON LLP
2555 Grand Boulevard
Kansas City, MO 64108
Telephone: (816) 474-6550
Fax: (816) 421-5547
eanielak@shb.com

Nicholas J. Boyle (*pro hac vice*)
Carl R. Metz (*pro hac vice*)
C. Bryan Wilson (*pro hac vice*)
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
Telephone: (202) 434-5000
Fax: (202) 434-5029
nboyle@wc.com

*Attorneys for Plaintiffs CoStar Group, Inc.
and CoStar Realty Information, Inc.*

By: /s/ Mark B. Lehnardt

Mark B. Lehnardt - MO Bar # 63670
Gregory J. Commins, Jr. (*pro hac vice*)
Baker Hostetler LLP
1050 Connecticut Avenue, N.W.,
Suite 1100
Washington, DC 20036
Telephone: 202-861-1536
Fax: 202-861-1783
gcommins@bakerlaw.com
mlehnardt@bakerlaw.com

*Attorneys for Alfred T. Giuliano, in his
capacity as the Chapter 7 trustee for the
bankruptcy estate of Xceligent, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document was filed electronically with the above-captioned Court on this 2nd day of December 2019. Notice of this filing will be sent to the parties by operation of the Court's electronic filing system, and the parties may access this filing through the Court's system.

/s/ Mark B. Lehnardt
Mark B. Lehnardt